

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BYRON SANTOS,

Plaintiff,

OPPOSITION TO DEFENDANTS

SUMMARY JUDGEMENT MOTION

22-CV-6338

HON. ELIZABETH A WOLFORD

-vs-

C.O JONES, et al.,

Defendants,

PLEASE TAKE NOTICE that Byron Santos Pro Se Plaintiff, 1535 Undercliff Avenue Apt.223 Bronx N.Y. 10453 Represents himself in the above Captioned Action.

Memorandum of Law, Statement of Material Facts, Opposing Affidavits and Exhibits

1) I am filing this motion in response to defendants Sergeant Hessel, defendant Sergeant D. Filighera, and Defendant Correctional Officer Warren motion for summary judgement. I am informing the court that as a Pro Se Plaintiff; I understand that a complaint cannot hold without any material facts. Without discovery, I cannot fully defend my case properly. With that said, I continue by presenting my case as best as I can. I start by showing the court the arguments from Defendants summary judgement motion, the defendants arguments are as follows.

- a) Plaintiff did not exhaust a grievance pertaining to the incident alleged prior to filing the instant suit.(Declaration of Deutsch
- b) Plaintiff's PREA complaint pertained only to two instances where he alleged a

correctional officer inserted a finger into his rectum and not to any other of the allegations of the amended complaint.

- a) Plaintiff did successfully file numerous grievances during his time at Collins C.F. and appealed one to exhaustion.
- b) Plaintiff did not exhaust a grievance about or mention in his PREA complaint. (1) has allegations pertaining to the 3:40 incident. (2) his allegations pertaining to the 8:20 incident. And (3) his allegations that Sergeant Hessel was Deliberately indifferent to his medical needs.

2) In Response to Defendants Arguments, I Byron Santos Plaintiff has exhausted all available remedies when filing all my prior complaints verbally and on paper while being abused. Plaintiff's complaints/grievances were said and sent to everyone that seemed important or that was within eye or hearing view of him while placed on lockdown, 23hours a day to no avail which will show on camera and audio.

3) As you can see in defendants (Declaration of Hillel Deutsch , Exhibit 2 - page 1 and 2)(see as Exhibit#2 pages 1 of 21), that it shows the Department Of Correction and Community Supervision incarcerated individuals grievance program home page for closed grievance cases that was shown on behalf of Plaintiff Department Records; which shows one grievance closed dated 7/1/2019 while another is shown closed on 11/3/2021.

4) On (Declaration of Hillel Deutsch , Exhibit#2-page 1 of 2) (see as Exhibit#2 pages 1 of 21) you will as well see the Department Of Correction and Community Supervision incarcerated individuals' grievance programs home page for active grievances that was shown on behalf of Plaintiff Department Records; shows one active case dated 09/09/2022.

- 5) As you have reviewed the Exhibits, you can now see on plaintiff's (Exhibit 3-pages 1 of 26) shows that Department of Corrections and Community Supervision and/or defendants decides what complaint/grievances to file if it makes the entity perceive less decriminalizing and i plaintiff assert this statement because plaintiffs (Exhibit 3-pages 1 of 26) will show the court the discrepancies within the defendants motion on receiving and/or updating information, in this case complaints/grievances.
- 6) Plaintiff asked the court to deny defendants motion for summary judgement on the ground that plaintiff has set forth (Exhibit 1-page 1 of 2) will show that the departments website and/or files have not been updated due to three different dates of active and close complaints/grievances from (Declaration of Hillel Deutsch, Exhibit#2-pages 1 and 2)(see as Exhibit#1-pages 1 of 2)
- 7) On (Exhibit 3-pages 1 of 26), i plaintiff show the court that defendants (Declaration of Hillel Deutsch Exhibit #2 and #3) are in fact missing information.
- 8) In (Exhibit#3-pages 1 of 26) plaintiff show the court proof of more than the 3 active and closed complaints/grievances that defendants are introducing in their file summary judgement motion which to plaintiff is perceived to be misleading¹.
- 9) In fact, the plaintiff has evidence that there were actually much more closed and active complaints/grievances that plaintiff actually had while incarcerated as well as the complaints/grievances that plaintiff exhausted all administrative remedies available to him at the time of the continuous retaliation as well as verbal and physical abuse.
- 10) I would also like to inform the court that plaintiff added in (exhibit#4) the affidavits of my girlfriend Yakima Alonzo, my mother Luz Almanzar, my older sister Suleika Almanzar, my friend Jason Burgos, and the affidavit of plaintiff.

- 11) Plaintiff would like the court to look at (Exhibit #5) to better understand the plaintiffs (Exhibit #4) affidavits and to better answer defendants last two questions.
- 12) The Department Of Corrections and Community Supervision has a zero-tolerance policy for sexual abuse and sexual harassment.
- 13) When reporting sexual abuse or sexual harassment it is recommended to write the superintendent, a member of the superintendent or staff, you can as well report it to OSI by calling #777 or have family, friends, or lawyers call on the victims behalf.
- 14) As you can see in (Exhibit#4) plaintiffs girlfriend Yakima Alonso reported plaintiffs abuse to the Department of OSI, DOCCS Commissioners Office, Collins front office and plaintiff's attorney to no avail. As he explained it to her Before and After April 28th 2022, as you can see plaintiffs mother reported plaintiffs abuse to OSI, DOCCS Commissioners Office, Collins front office and plaintiff's attorney as well as plaintiffs friend Jason Burgos that was present with plaintiff girlfriend at the time that calls for the complaint were being made.
- 15) As for defendant Sergeant Hessel belief that plaintiff didn't file a grievance because defendant was deliberately indifferent to plaintiffs medical needs while sexually assaulted, Plaintiff would like the court to deny his argument because it's not a separate incident which means that the constitutional violation committed against plaintiff was continuous and plaintiff's (exhibit #4) will show that if plaintiff friends, family and lawyer, Have not filed complaints/grievances to all the said parties plaintiff would not have been seen by the medical doctors, and/or OSI, officer Hensley and plaintiffs injuries documented a week after the incident occurred.
- 16) Plaintiff would like the court to review his own (Exhibit#6) plaintiff would like to show the court that before the placement to Collins C.F. he was incarcerated at Five Points C.F and

received only 1 misbehavior report which who indeed took responsibility for, on (Exhibit#6) plaintiff will show highlighted the only misbehavior report received at Five Points Correctional Facility.

17) Plaintiff would like to show (exhibit#7) that plaintiff did not receive a misbehavior report at mid-state correctional facility were plaintiff resided at after Collins correctional facility, in fact plaintiffs received multiple good behavior reports that you will see in exhibit#7.

18) Plaintiff would like to show you in (Exhibit#8) that even though he received one misbehavior report while at five points C.F. he did receive multiple positive behavior reports unlike all the misbehavior reports given by defendants, (see Exhibit#8).

19) Defendant Sergeant D Filighera who I will show uses misbehaviors reports for their own retaliatory measures against incarcerated individuals and plaintiff (see exhibit#9).

20) In (Exhibit#9) you will see that defendant Sergeant D Filighera falsified a misbehavior report against plaintiff for an infraction that the acting hearing officer concluded due to his video and audio observation the incident never occurred, also in (Exhibit#9) plaintiff shows proof of defendants being biased against plaintiff by Discouraging plaintiff with negative reports.

21) Plaintiff would like to show proof on (Exhibit#10) of a complaint/grievance that he filed on behalf of another incarcerated individual due to the fact that the incarcerated individual was being deprived of pen and paper, and instead of investigating the complaint/grievance that plaintiff filed on behalf of the incarcerated individual because plaintiff was told to file the complaint/grievance on his behalf, Defendant Becker wrote plaintiff a grievance denial correspondence which is also in (Exhibit 10).

22) On (Exhibit#11) plaintiff will show correspondence from Angela T PREA case manager from Crisis services that resides at 100 river rock drive suite 300 buffalo N.Y 14207, these letters are from plaintiffs former rape counselor, which plaintiff had spoken to before and during the abuse which was also helpful in filing all complaints plaintiff needed regarding the assaults, Rapes, Medical Neglect etc.

23) Finally on (Exhibit#12) Plaintiff would like to show the court proof that he in fact asked in looking for an attorney who can take over the case to no avail and plaintiff remains to look.

Wherefore the plaintiff asks the court to deny defendants motion for summary judgement on the said grounds and ask the court to the case proceed to discovery. And a anything else the court deems just and proper.

CERTIFICATE OF SERVICE

I Certify that on January 24, 2024, I filed the foregoing Opposition in response to defendant summary of motion on behalf of plaintiff Byron Santos with the clerk of the district court.

And, I hereby Certified i have mailed by the united states postal service a copy of the documents to the following participants(s):

1.CLERK, U.S. DISTRICT COURT
UNITED STATES COURTHOUSE
ROCHESTER, NY 14614-1387

2.LETITIA JAMES
Attorney General of the State of New York
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Sworn before me on 24, of January, 2024

NOTARY PUBLIC

